

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

United States of America,

v.

Case No. 1:18-cr-00158

Darryl Maurice Baker,
Defendant.

Michael L. Brown
United States District Judge

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ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Magistrate Judge's Report and Recommendation ("R&R") (Dkt. 40), recommending that the Court deny Defendant Darryl Maurice Baker's Motion to Dismiss. (Dkt. 35). The Order for Service of the R&R provided that each party may file written objections within fourteen days of service of the order. (Dkt. 21). Neither party filed objections to the R&R.

Absent objections, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). The court may accept the recommendation if it is not clearly erroneous or contrary to the law. Fed. R. Crim. P. 59. After a careful and complete review of the findings and

recommendations, the Court finds no error in the Magistrate Judge's recommendation that the Court deny Defendant's Motion to Dismiss.

To be sufficient, an indictment must contain the essential elements of the offense. *United States v. Fern*, 155 F.3d 1318, 1324-25 (11th Cir. 1998). In describing the elements, the indictment must apprise the Defendant of what he must be prepared to meet. *United States v. Sharpe*, 438 F.3d 1257, 1263 (11th Cir. 2006). To determine if an indictment is sufficient, the Court looks only to the face of the indictment. *Id.*

Defendant here makes two claims, and both claims ask the Court to look past the indictment and into the quality of the evidence. First, Defendant argues that the evidence in discovery cannot show the proper scienter to convict Defendant for communicating through interstate commerce a threat to injure the person of another. Dkt. 35 at 4. Second, Defendant posits that because he made the call from a telephone in Georgia to a Veterans Affairs hotline based in Georgia that "there is a fatal absence of the requisite impact on interstate commerce." *Id.* at 5. As the Magistrate Judge notes, both claims ask the Court to look to the veracity and sufficiency of the evidence as opposed to the sufficiency of

the language of the indictment. These questions are not proper for a motion to dismiss.

Accordingly, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation (Dkt. 40) and **DENIES** Defendant's Motion to Dismiss. (Dkt. 35).

IT IS SO ORDERED.

Dated: October 17, 2018
Atlanta, Georgia



MICHAEL L. BROWN
UNITED STATES DISTRICT JUDGE